

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1556 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ARIFKHAN ABDUL RASHID SURTI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1556 of 2004
MR EE SAIYED for Petitioner No. 1
MR SIKANDER SAIYED for Petitioner No. 1
Ms. Mita S Panchal, AGP for Respondent No. 3
-

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 11/03/2004

ORAL JUDGEMENT

This is a petition under Article 226 of the
Constitution of India in order to challenge an order of

detention of the petitioner dated 21.1.2004 recorded by respondent no.2 herein detaining the petitioner in Porbandar jail upto 8th May, 2004. The said order has been placed at page 11 to the petition.

2. The petitioner challenges the said order stating that the respondent has no jurisdiction or authority to pass such an order of detention and, therefore, the order of detention is illegal and deserves to be set aside. The facts of the case of the petitioner may be gathered from record. The petitioner was originally externed out of the limits of southern Gujarat for a period upto 8.5.2004. He allegedly committed violation of the said order and, therefore, he was detained. Thereafter the petitioner preferred Special Civil Application No.13855 of 2003. By order dated 7.10.2003, this Court (Coram: Hon'ble Mr Justice J R Vora) allowed the said petition and directed that the petitioner be released on furnishing undertaking that the petitioner will not enter the restricted zone until the order of externment stands against him.

3. Thereafter, the petitioner was found present in the aforesaid restricted zone and, therefore, he was arrested and an order was passed on 22.1.2004 directing his detention in Porbandar jail of Probandar district of Gujarat State till 8.5.2004 i.e. the date on which the the externment against the petitioner will come to an end. These facts cannot be disputed. Learned Advocate for the petitioner has contended that the above order has been passed without jurisdiction and, therefore, it may be quashed and set aside.

4. On receiving the petition, rule was issued and in response to the service of rule, Ms. Mita S Panchal, learned AGP, appears on behalf of the respondents. I have heard the learned Advocates for the parties and perused the papers.

5. On going through the order of detention dated 21.1.2004 placed at page 11 of the petition, it is found that the petitioner was externed out of the limits of Surat City, Surat Rural, Navsari, Bharuch and Valsad districts for a period of two years beginning from 9.5.2002. Therefore, the petitioner was required to keep away from the said area upto 8.5.2004. The detention order further shows that the petitioner was found present in the city limits of Surat on the date indicated in the order. Learned Advocate for the petitioner has contended that the petitioner was all the while, staying at Navagam, Maharashtra State and because of his personal

work, he wanted to go to Ahmedabad and, therefore, he had passed Surat railway station and, there, he had met his wife also. It is, therefore, the argument of Mr E E Saiyed, learned Advocate for the petitioner that the petitioner has not violated the order of externment when the petitioner was required to keep him away from the aforesaid Districts. It was not open to him to enter Surat district for any purpose. In that view of the matter and when the said externment order has not been challenged and when the undertaking was given by the petitioner referred to above, it would not be open to this court to reconsider the said issue. Therefore, it has to be accepted that the petitioner, violating the terms and conditions of the externment order as well as his own undertaking given to this Court, entered the restricted zone. However, the crucial point is as to whether the petitioner could be detained on his committing violation of externment order and violation of his undertaking. The second respondent has referred to the provisions made in section 62 (2) of the Bombay Police Act, 1951. On going through the provisions contained in section 62, it appears that the said provision does not empower the second respondent to detain the petitioner for a particular period at a particular place. With a view to have an idea of the provisions contained in section 62 of the said Act, it would be worthwhile to refer and reproduce the same for ready reference:

"62. Procedure on failure of person to leave the area and his entry therein after removal - (1) if a person to whom a direction has been issued under section 55, 56 or 57 to remove himself from an area -

(i) fails to remove himself as directed,
or

(ii) having so removed himself, except with the permission in writing of the authority making the order enters the area within the period specified in the order, the authority concerned may cause him to be arrested and removed in in in the said authority may in each case prescribe.

(2) The authority making an order under section 55, 56 or 57 may in writing permit any person in respect of whom such order has been made to enter to return to the area, including any contiguous districts or part thereof, from which he was directed to remove himself, for such temporary period and subject to such conditions

as may be specified in such permission and may require him to enter into a bond with or without surety for the due observance of the conditions imposed. The authority aforesaid may at any time revoke at any time such permission. Any person who with such permission enters or returns to such area shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to enter or return, or on the earlier revocation of such permission, shall remove himself outside such area, or the area and any contiguous districts or part thereof, and shall not enter therein or return thereto within the unexpired residue of the period specified in the original order made under section 55,56 or 57 without a fresh permission. If such person fails to observe any of the conditions imposed, or to remove himself accordingly, or having so removed himself enters or returns to the area, or the area and any continuous district or part thereof, without fresh permission, the authority concerned may cause to be arrested and removed in police custody to such place outside the area as that authority may in each case prescribe."

On going through the above provisions, it is amply clear that if the petitioner fails to observe any of the conditions imposed or to remove himself from the area mentioned in the externment order or if he enters or return to the said area without any permission, then the authority concerned may cause to arrest him and remove in police custody to such place outside the area as that authority may in each case prescribe.

6. On a bare reading of sub-section (2) of section 62 of the said Act, it becomes clear that the power given to the police is to remove the said person in police custody. It does not mean that such person can be continuously kept in police custody till the externment order exists. In that view of the matter, the detention under this provision is unwarranted. There is no other provision under which the petitioner can be detained till the externment order exists. At this stage, learned Advocate for the petitioner makes it clear that only two months have been left out and the externment order would come to an end on 8.5.2004. He also agrees that the petitioner shall stay in Porbandar revenue district only till the said date. In aforesaid view of the matter, when the order is not in accordance with law, and in view of the above undertaking, it would be appropriate to exercise writ jurisdiction in order to allow this

petition and release the petitioner from the custody of Porbandar jail.

7. For the foregoing reasons, this petition is allowed. The impugned detention order dated 21.1.2004 passed by the second respondent is ordered to be quashed and set aside. The petitioner shall be released from the detention and he shall be set at liberty forthwith, if not required in any other case, on condition that the petitioner shall stay in Porbandar revenue district till 8.5.2004 and before his release from the said detention, he shall submit his undertaking before respondent no.3 to that effect.

Rule is made absolute accordingly. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp